

RAMSEYER DRAFT
(5/1/02)

DEPARTMENT OF LAND AND NATURAL RESOURCES
Amendments to Chapter 13-95
Hawaii Administrative Rules

(Date)

1. Section 13-95-1, Hawaii Administrative Rules, is amended by amending the definition of "take" to read:

"Take" means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, or harvest, aquatic life. The use of any gear, equipment, tool, or any means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, or harvest, aquatic life by any person who is in the water, or in a vessel on the water, or on or about the shore where aquatic life can be fished for, caught, captured, confined, or harvested, shall be construed as [fishing] taking." [Eff 12/03/98; am] (Auth: HRS §§187A-3.5, 187A-5) (Imp: HRS §§187A-3.5, 187A-5)

2. Section 13-95-4, Hawaii Administrative Rules, is amended to read as follows:

"§13-95-4 Aholehole. [(a)] It shall be unlawful for any person to take, possess [with the intent to] or sell[, or offer for sale,] any aholehole less than five inches in length.

[(b) It shall be unlawful for any person to take with spear or possess any speared aholehole less than five inches in length.]" [Eff 12/03/98; am] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

3. Section 13-95-5, Hawaii Administrative Rules, is amended to read as follows:

"§13-95-5 Manini. [(a)] It shall be unlawful for any person to take, possess [with the intent to] or sell[, or offer for sale,] any manini less than five inches in length.

[(b) It shall be unlawful for any person to take with spear or possess any speared manini less than five inches in length.]" [Eff 12/03/98; am] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

4. Section 13-95-6, Hawaii Administrative Rules, is amended to read as follows:

"§13-95-6 [Moana.] Moano. [(a)] It shall be unlawful for any person to take, possess [with the intent to] or sell[, or offer for sale,] any [moana] moano less than seven inches in length.

[(b) It shall be unlawful for any person to take with spear or possess any speared [moana] moano less than seven inches in length.]" [Eff 12/03/98; am] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

5. Section 13-95-7, Hawaii Administrative Rules, is amended to read as follows:

"§13-95-7 Kumu. [(a)] It shall be unlawful for any person to take, possess [with the intent to] or sell[, or offer for sale,] any kumu less than [seven] ten inches in length.

[(b) It shall be unlawful for any person to take with spear or possess any speared kumu less than seven inches in length.]" [Eff 12/03/98; am] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

6. Section 13-95-8, Hawaii Administrative Rules, is amended to read as follows:

"§13-95-8 Mullet. (a) It shall be unlawful for any person to take, possess [with the intent to] or sell[, or offer for sale,] any mullet less than [seven] twelve inches in length.

(b) It is unlawful for any person to wilfully fish for, or attempt to take by any means whatsoever, from any of the waters within the jurisdiction of the State, or to sell[, offer for sale], or have in possession any mullet during the months of December, January, [or] February, and March; provided that any owner or operator of a fish pond may lawfully catch the young mullet known as pua during the closed season, for the purpose of stocking the owner's or operator's pond; and provided further that any owner or operator of a fish pond or any commercial marine dealer may lawfully sell pond raised mullet during the closed season after first procuring a license to do so pursuant to sections 13-74-40 or 13-74-43.

[(c) It shall be unlawful for any person to take

with spear or possess any speared mullet less than seven inches in length.]" [Eff 12/03/98; am]
 (Auth: HRS §187A-5) (Imp: HRS §187A-5)

7. Section 13-95-9, Hawaii Administrative Rules, is amended to read as follows:

"§13-95-9 Awa. [(a)] It shall be unlawful for any person to take, possess [with the intent to] or sell[, or offer for sale,] any awa less than nine inches in length.

[(b)] It shall be unlawful for any person to take with spear or possess any speared awa less than nine inches in length.]" [Eff 12/03/98; am]
 (Auth: HRS §187A-5) (Imp: HRS §187A-5)

8. Section 13-95-10, Hawaii Administrative Rules, is amended to read as follows:

"§13-95-10 Oio. [(a)] It shall be unlawful for any person to take, possess [with the intent to] or sell[, or offer for sale,] any oio less than [nine] fourteen inches in length.

[(b)] It shall be unlawful for any person to take with spear or possess any speared oio less than nine inches in length.]" [Eff 12/03/98; am]
 (Auth: HRS §187A-5) (Imp: HRS §187A-5)

9. Section 13-95-11, Hawaii Administrative Rules, is amended to read as follows:

"§13-95-11 Kala. [(a)] It shall be unlawful for any person to take, possess [with the intent to] or sell[, or offer for sale,] any kala less than [nine] fourteen inches in length.

[(b)] It shall be unlawful for any person to take with spear or possess any speared kala less than nine inches in length.]" [Eff 12/03/98; am]
 (Auth: HRS §187A-5) (Imp: HRS §187A-5)

10. Section 13-95-12, Hawaii Administrative Rules, is amended to read as follows:

"§13-95-12 Opelu kala. [(a)] It shall be unlawful for any person to take, possess [with the intent to] or sell[, or offer for sale,] any opelu kala less than [nine] sixteen inches in length.

[(b)] It shall be unlawful for any person to take

"§13-95-16 Uhu. [(a)] It shall be unlawful for any person to take, possess [with the intent to] or sell[, or offer for sale,] any uhu less than [one pound in weight] twelve inches in length." [Eff 12/03/98; am] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

"§13-95-23 Kona crab. (a) It shall be unlawful for any person to [possess with the intent to sell, or offer for sale,] take, possess, or sell any Kona crab less than four inches in carapace length [or in width across or along its back].

(b) It is unlawful for any person to take, [kill, sell, or offer for sale, or have in possession] possess, or sell any Kona crab taken from the waters within the jurisdiction of the State during the months of May, June, July, and August.

(c) The possession of any Kona crab by any person during the months of May, June, July, and August shall be prima facie evidence that the person is guilty of a violation of this section; provided that any commercial marine dealer may sell, or any hotel, restaurant, or other public eating house may serve Kona crab lawfully caught during the open season by first procuring a license to do so pursuant to section 13-74-41.

(d) It is unlawful for any person to [catch or take from any bay, harbor, or other waters of the State, or to expose or offer for sale, or to hold in possession with the intent of exposing or offering for sale, or to kill,] take, possess, or sell any Kona crab while with eggs. Any Kona crab with eggs caught must immediately be returned to the waters from which the crab was taken. The possession of any Kona crab, showing indications of the eggs having been scraped or removed therefrom, shall be prima facie evidence of the violation of this section.

(e) No person shall pursue, take, or kill any Kona

crab in the State with a spear.

(f) No person shall [offer for sale] possess or sell any speared Kona crab." [Eff 12/03/98; am
] (Auth: HRS §187A-5) (Imp: HRS
§187A-5)

13. Section 13-95-1, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Aholehole" means any fish known as *Kuhlia xenura* or *Kuhlia sandvicensis* or any recognized synonym."

14. Section 13-95-1, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Awa" means any fish known as *Chanos chanos* or any recognized synonym."

15. Section 13-95-1, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Carapace length" means the straight line measurement from the tip of the rostrum to the middle of the trailing edge of the body or carapace, not including the tail."

16. Section 13-95-1, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"He'e" means any mollusk known as *Octopus cyanea*, *Octopus ornatus*, or any recognized synonym."

17. Section 13-95-1, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Kala" means any fish known as *Naso unicornis*, *Naso brevirostris*, *Naso annulatus*, or any recognized synonym."

18. Section 13-95-1, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Kona crab" means any crab known as *Ranina ranina* or any recognized synonym."

19. Section 13-95-1, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Kumu" means any fish known as *Parupeneus porphyreus* or any recognized synonym."

20. Section 13-95-1, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Length" means the straight line measurement from the tip of the snout to the middle of the trailing edge of the tail."

21. Section 13-95-1, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Manini" means any fish known as *Acanthurus triostegus sandvicensis* or any recognized synonym."

22. Section 13-95-1, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Moano" means any fish known as *Parupeneus multifaciatus* or any recognized synonym."

23. Section 13-95-1, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Moi" means any fish known as *Polydactylus sexfilis* or any recognized synonym."

24. Section 13-95-1, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Mullet" means any fish known as *Mugil cephalus* or any recognized synonym."

25. Section 13-95-1, Hawaii Administrative Rules, is amended by adding a new definition to read as

follows:

"Oio" means any fish known as *Albula glossodonta* or any recognized synonym."

26. Section 13-95-1, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Opelu kala" means any fish known as *Naso hexacanthus* or any recognized synonym."

27. Section 13-95-1, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Sell" means to solicit and receive an order for; to have, or keep, or offer, or expose for sale; to deliver for value or in any other way than purely gratuitously; to peddle; to keep with intent to sell; and to traffic in."

28. Section 13-95-1, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Speared" means to capture aquatic life by stabbing with a spear or other such pointed device. The presence of any puncture wound on the external surfaces of the aquatic life, which are fresh and does not show signs of healing, shall be evidence that the aquatic life was speared."

29. Section 13-95-1, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Slipper lobster" means any crustacean of the species *Scyllarides squammosus* or *S. haanii*, or recognized synonyms. These animals are also known as rock lobster, mole lobster, shovel-nosed lobster, or ula papapa."

30. Section 13-95-1, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Spiny lobster" means any crustacean of the species *Panulirus penicillatus* or *P. marginatus*, or recognized synonyms. These animals are also known as lobster, Hawaiian spiny lobster, red lobster, green lobster, or ula."

31. Section 13-95-1, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Uhu" means any fish known as *Scarus dubius*, *Scarus psittacus*, *Scarus rubroviolaceus*, *Chlorurus sordidus*, *Chlorurus perspicillatus*, or any recognized synonym."

32. Section 13-95-1, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Ulua" means any fish known as *Caranx ignobilis*, *Caranx lugubris*, *Caranx melampygus*, *Caranx sexfasciatus*, *Caranqoides equula*, *Caranqoides ferdau*, *Caranqoides orthogrammus*, or any recognized synonym. The young of these species are also known as papio."

33. Section 13-95-1, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Weke" means any fish known as *Mulloidichthys flavolineatus* or any recognized synonym. These fish are also known as goatfish, yellowstripe goatfish, weke a, and the young of this fish is known as oama."

34. Chapter 13-95, Hawaii Administrative Rules, is amended by adding a new section 13-95-1.1 to read as follows:

"§13-95-1.1 Licenses, permits, and other exemptions. Notwithstanding the provisions of this chapter, the department may issue the following licenses and permits to exempt persons from the provisions of this chapter:

- (1) Licenses issued pursuant to section 187A-3.5, HRS;
- (2) Permits issued pursuant to section 187A-6, HRS;
- (3) Permits issued pursuant to section 188-23,

- HRS;
- (4) Permits issued pursuant to section 188-37,
HRS;
- (5) Permits issued pursuant to section 188-44,
HRS;
- (6) Permits issued pursuant to section 188-57,
HRS;
- (7) Permits issued pursuant to section 188-68,
HRS;
- (8) Licenses issued pursuant to section 189-6,
HRS; and
- (9) As may be otherwise provided by law." [Eff
] (Auth: HRS §§187A-
3.5, 187A-6, 188-23, 188-37, 188-44, 188-45,
188-57, 188-68) (Imp: HRS §§187A-3.5, 187A-
6, 188-23, 188-37, 188-44, 188-45, 188-57,
188-68)

35. Chapter 13-95, Hawaii Administrative Rules, is amended by adding a new section 13-95-22 to read as follows:

"§13-95-22 Ulua. (a) It is unlawful for any person to take or possess any ulua less than ten inches in length.

(b) It is unlawful for any person to sell any ulua less than sixteen inches in length.

(c) It is unlawful for any person to take or possess more than twenty ulua measuring more than ten inches in length per day; provided that a commercial marine licensee may take, possess, and sell more than twenty such ulua; and further provided that a commercial marine dealer may possess and sell more than twenty such ulua with receipts issued for the purchase pursuant to section 189-11, Hawaii Revised Statutes."

[Eff] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

Historical Note: Chapter 87 of Title 13 was based substantially upon Regulation 19 of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii. [Eff 3/28/58; am 10/6/58; R 5/26/81] Section 13-95-22 is based substantially upon Chapter 87 of Title 13. [Eff 5/26/81; am 1/25/82; R]

36. Chapter 13-95, Hawaii Administrative Rules, is amended by adding a new section 13-95-23 to read as

follows:

"§13-95-23 Moi. (a) It is unlawful for any person to take, possess, or sell any moi less than eleven inches in length.

(b) It is unlawful for any person to take, possess, or sell more than fifteen moi per day during September through May; provided that a commercial marine dealer may possess and sell more than fifteen moi with receipts issued for the purchase pursuant to section 189-11, Hawaii Revised Statutes.

(c) It is unlawful for any person to take, possess, or sell any moi during June, July, and August."
[Eff] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

Historical Note: Chapter 88 of Title 13 was based substantially upon Regulation 20 [Eff: 3/20/58; am 10/6/58; am 7/9/59; am 5/4/68; R 5/26/81] and Regulation 21 [Eff: 3/28/58; am 10/6/58; am 7/9/59; R 5/26/81] of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii. Section 13-95-23 is based substantially upon Chapter 88 of Title 13. [Eff 5/26/81; am and comp 12/20/86; R]

37. Chapter 13-95, Hawaii Administrative Rules, is amended by adding a new section 13-95-24 to read as follows:

"§13-95-24 Weke. (a) It is unlawful for any person to take weke less than seven inches in length using any fishing gear other than pole and line with one landing net.

(b) It is unlawful for any person to take or possess more than fifty weke less than seven inches in length per day.

(c) It is unlawful for any person to sell any weke less than seven inches in length." [Eff]
(Auth: HRS §187A-5) (Imp: HRS §187A-5)

Historical Note: Chapter 88 of Title 13 was based substantially upon Regulation 20 [Eff: 3/20/58; am 10/6/58; am 7/9/59; am 5/4/68; R 5/26/81] and Regulation 21 [Eff: 3/28/58; am 10/6/58; am 7/9/59; R 5/26/81] of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii. Section

13-95-24 is based substantially upon Chapter 88 of Title 13. [Eff 5/26/81; am and comp 12/20/86; R]

38. Chapter 13-95, Hawaii Administrative Rules, is amended by adding a new section 13-95-55 to read as follows:

"§13-95-55 He'e. It shall be unlawful for any person to take, possess, or sell any he'e less than one pound in weight." [Eff] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

Historical Note: Chapter 86 of Title 13 was based substantially upon Regulation 18 of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii. [Eff. 3/28/58; am 10/6/58; R 5/26/81] Section 13-95-55 is based substantially upon Chapter 86 of Title 13 [Eff 5/26/81; R].

39. Material, except source notes, to be repealed is bracketed. New material is underscored.

40. Additions to update source notes to reflect these amendments are not underscored.

41. This amendment to chapter 13-95, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

GILBERT S. COLOMA-AGARAN, Chairperson
Board of Land and Natural Resources

APPROVED AS TO FORM:

Deputy Attorney General